IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No.123 of 2001

Decided on: 6.12.2007

State of H.P. **…Appellant**

Versus

Tilak Raj **…Respondent**

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting?

For the appellant : Mr. Vijay Thakur, Dy. Advocate General.

For the respondent : None.

Surjit Singh, Judge (oral)

Heard and gone through the record.

Respondent was sent up for trial for offences punishable, under Sections 279, 337 and 338 of the Indian Penal Code. Trial Magistrate after conducting the trial has acquitted the respondent holding that the case is not proved beyond reasonable doubt. State has appealed against the judgment of acquittal.

2. Prosecution version, as per record, is like this. On 19.10.1998, PW-1 Amin Chand was returning home after purchasing crackers on his scooter No.PUX-8363 when a van being driven by the respondent hit the scooter, as a result of which PW-1 Amin Chand, his son PW-2 Sanjeev Kumar and his nephew Jasbir Singh, who were riding the pillion, sustained injuries, including a grievous injury. Van was allegedly being driven by the respondent in a rash/negligent manner and because of that the accident took place. Matter was reported to the police. Police investigated the case. All the injured were got medically examined.

Whether reporters of the local papers may be allowed to see the judgment?

Statements of the injured and other witnesses, who witnessed the occurrence, were recorded. Ultimately, the respondent was challaned.

3. Plea taken by the respondent is that at the site of the accident there was a downward gradient for the scooterist, whereas for the van it was an ascent and that because of this position of the road at the site, scooter was moving at a faster speed compared to the speed of the van. It is also his plea that PW-4 Jasbir Singh, a nephew of PW-1 Amin Chand, was not riding the pillion alongwith PW-2 Sanjeev Kumar, the son of Amin Chand, but was standing ahead of PW-1 Amin Chand and because of that Amin Chand could not apply the brakes of the scooter at the site of the accident, where widening of the road was going on and he fell on the stones lying by the side of road. Though PW-1 Amin Chand and PW-2 Sanjeev Kumar have denied that Jasbir Singh was not riding the pillion but was standing between the handle of the scooter and the seat of the driver of the scooter and PW-4 Jasbir Singh also made similar statement in the examination-in-chief, yet in his cross-examination Jasbir Singh admitted that he was not riding the pillion, but was standing ahead of PW-1 Amin Chand, his father's elder brother. He admitted that he made the statement in his examination-in-chief that he was riding the pillion because of having been tutored like that by PW-1 Amin Chand. Why should have PW-1 Amin Chand tutored PW-4 Jasbir Singh to make a false statement? The reason appears to be obvious. Had the witness not stated so, that would have proved the defence plea that on account of Jasbir Singh standing near the brake paddle, PW-1 Amin Chand could not control the speed of the scooter by applying the brake and on account of the fast speed, the scooter went out of control and fell at the site where widening of the road was going on. It may be noted that PW-1 Amin Chand is a police official. Therefore, the possibility that he used his

influence with the police, during the course of investigation, cannot be ruled out.

4. In view of the above stated position, I see no reason for interfering with the judgment of acquittal passed by the trial Magistrate. Hence, the appeal is dismissed.

December 6, 2007(ss) **(Surjit Singh), J**